

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1025 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements? No
2. To be referred to the Reporter or not? No :
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement? No
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No :

GSRTC

Versus

DAHYABHAI MADHURBHAI VAGHARI

Appearance:

MR HARDIK C RAWAL for Petitioner

MR JS BRAHMBHATT for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 12/07/1999

ORAL JUDGEMENT

1. The petitioner, through this writ petition, has prayed for quashing of the Award dated 31st October, 1998 passed by the Labour Court, Nadiad, in Reference No.433 of 1991.

2. Brief facts giving rise to this petition are as under :

The respondent was in employment of the petitioner as worker. According to the petitioner the respondent remained absent from duty from 9.10.1981 to 9.12.1981 without any intimation. Disciplinary proceedings were conducted against the respondent and after completion of disciplinary proceedings the respondent was dismissed from service on 12.1.1982. After a lapse of seven years Reference was made by the respondent which was dismissed in default. Thereafter it was restored and then on Reference being made the matter was adjudicated by the Labour Court, which gave Award in favour of the respondent with relief of reinstatement together with 25 % backwages from the date of dismissal. It is this order of the Labour Court which is under challenge to this writ petition.

3. Having heard the arguments of the learned Counsel for the parties and looking to the material on record especially the conduct of the respondent of making Reference after a lapse of seven years and also after considering the other circumstances emerging from the material on record it is not necessary to go into the merits of the case in detail. It may be mentioned that this petition was filed and was admitted on 11.2.1999. On 15.2.1999 the respondent was reinstated despite the order of the Court passed on 11.2.1999 that the operation of the impugned order shall remain stayed meanwhile. If despite this interim order the petitioner reinstated the respondent on 15.2.1999 it can safely be inferred that the petitioner has actually no grievance against the order of the Labour Court reinstating the petitioner.

4. Learned Counsel for the petitioner however contended that awarding of 25 % backwages from 12.1.1982, namely, the date of order of dismissal is hardly justified in view of the conduct of the petitioner in making belated Reference after seven years and that too not perusing it diligently and allowing it to be dismissed in default and then getting the same restored. This conduct of the respondent cannot be over looked. However, the Award of 25 % backwages by the Labour Court cannot be said to be arbitrary, excessive or unreasonable. On the facts and circumstances of this case Award of 25 % backwages should be with effect from September, 1991 when the Reference was restored. Thus, the Award of backwages should be at the rate of 25 % with effect from 1st September, 1991 to the date of Award, namely, 31st December, 1998. However, it is also in the interest of justice that with effect from 1.11.1998 orders for stoppage of two increments with permanent effect should also be passed.

5. In view of above discussion the writ petition succeeds in part. The Award of the Labour Court reinstating the respondent is confirmed. The Award of the Labour Court awarding 25 % backwages is modified and it shall be operative with effect from 1.9.1991 to 31.10.1998 with further direction that two increments of the respondent with effect from 1.11.1998 on permanent basis shall remain stopped. No order as to costs.

sd/-

Date : July 12, 1999 (D. C. Srivastava, J.)

sas